



Appeal number: CA/2017/0007

**FIRST-TIER TRIBUNAL
(GENERAL REGULATORY CHAMBER)
CHARITY**

BETWEEN:

TOBIAS YEATS

Mr Yeats

- and -

CHARITY COMMISSION FOR ENGLAND AND WALES

**Charity
Commission**

**TRIBUNAL: Judge Peter Hinchliffe
Helen Carter
Stuart Reynolds**

Heard at: Fleetbank House, London

Date of hearing: 19 February, 2018

Attendances:

Mr Tobias Yeats represented himself.

For the Charity Commission: Mr Mathew Smith, Counsel, instructed by the Legal Dept. of Charity Commission.

DECISION

The appeal is refused.

REASONS

Background

1. Mr Yeats appeals against the decision of the Charity Commission on 21 July 2017 to refuse his application for the registration of The Banbury Children's Foundation as a Charitable incorporated Organisation ("CIO").
2. The Charity Commission declined to register The Banbury Children's Foundation as a CIO because it was not satisfied that the proposed CIO would be charitable on registration.
3. The purposes of The Banbury Children's Foundation were set out in its draft constitution in the following terms:

"3.0 Object

The object of the CIO is to advance to Human Rights to Children to the UK and to advance to Education.

3.1 Points

A foundation to Human Rights:

- *The foundation is to advance to human rights to children*
- *The foundation will empower people to make to those that hold to power fair to improve to policy making (through of a third party prize fund)*
- *The foundation is to reduce to discrimination to increase to opportunity to those held to margin*
- *The foundation is to promote to research to human rights to children adding to the store of human knowledge*
- *The foundation is to cultivate of particular opinion and sentiment to the public to promote mental and moral improvement*
- *The foundation is to support to human rights promotion of ethical standards of conduct*
- *The foundation is to build to serve to community and nation*

3.2 Charitable cause, those that will benefit

Adults and children of all social groups will benefit from a foundation that will promote to mental and moral improvement of human rights through cultivation of opinion and sentiment at organised events that will promote to discussion and philanthropic donation. Advancement to human rights and maintained standard of human rights for children will become realised through of a third party prize fund to academic specialists and journals to the field of study, ensuring at standards maintained to the future. The work of the foundation will also ensure at advancement of education of human rights for children.

Nothing in this constitution shall authorise an application of the property of the CIO for the purposes which are not charitable in accordance with section 7 of the Charities and Trustee Investment (Scotland) Act 2005 and section 2 of the Charities Act (Northern Ireland) 2008."

Legislation

4. Section 1(1) of the Charities Act 2011 (the "Act") provides:-
 - (1) For the purposes of the law of England and Wales, "charity" means an institution which -
 - (a) is established for charitable purposes only, and

(b) falls to be subject to the control of the High Court in the exercise of its jurisdiction with respect to charities.”

5. Section 2 of the Act gives the meaning of “charitable purpose”:
 - (1) For the purposes of the law of England and Wales, a charitable purpose is a purpose which—
 - (a) falls within section 3(1), and
 - (b) is for the public benefit (see section 4).
6. Amongst the purposes described in section 3(1) are:-
 - “(b) the advancement of education;”
 - “(h) the advancement of human rights;”
7. Section 4 of the Act states:-

“4 The public benefit requirement

 - (1) In this Act “the public benefit requirement” means the requirement in section 2(1) (b) that a purpose falling within section 3(1) must be for the public benefit if it is to be a charitable purpose.
 - (2) In determining whether the public benefit requirement is satisfied in relation to any purpose falling within section 3(1), it is not to be presumed that a purpose of a particular description is for the public benefit.
 - (3) In this Chapter any reference to the public benefit is a reference to the public benefit as that term is understood for the purposes of the law relating to charities in England and Wales.
 - (4) Subsection (3) is subject to subsection (2).”
8. Sections 207 and 208 of the Act are concerned with the formation and registration of CIO and provide:

“207 Application for CIO to be constituted and registered

 - (1) Any one or more persons (“the applicants”) may apply to the Commission for a CIO to be constituted and for its registration as a charity.
 - (2) The applicants must supply the Commission with—
 - (a) a copy of the proposed constitution of the CIO,
 - (b) such other documents or information as may be prescribed by CIO regulations, and
 - (c) such other documents or information as the Commission may require for the purposes of the application.

208 Cases where application must or may be refused

 - (1) The Commission must refuse an application under section 207 if -
 - (a) it is not satisfied that the CIO would be a charity at the time it would be registered, or
 - (b) the CIO's proposed constitution does not comply with one or more of the requirements of section 206 (constitution of CIOs) and any regulations made under that section.”

Case law

9. In *Independent Schools Council v Charity Commission* [2012] CH.214, the Upper Tribunal held that the “public benefit” has two elements. In order to qualify as charitable, a purpose must be for the public benefit, both in the sense that the nature of the purpose has to be such as to be a benefit to the community; and also in the sense that those who might benefit from the carrying out of the purpose have to be sufficiently numerous and identified in such a manner as to constitute a section of the public.

10. In *McGovern v Attorney-General and Another* (1982) Ch 321 the High Court held that a trust “would not be charitable if any of its main objects were of a political nature: that trusts for the purpose of seeking to alter the laws of the United Kingdom or a foreign country or persuading a country’s government to alter its policies or administrative decisions were political in nature”
11. In the present case, the burden is on Mr Yeats to prove, on the balance of probabilities, that The Banbury Children’s Foundation is to be established for a charitable purpose set out in section 3 (1) of the Act and is for the public benefit.
12. All the purposes of The Banbury Children’s Foundation must be charitable in order for the claim to registration to succeed. That is to say that its purposes or objects must be exclusively charitable. The status of The Banbury Children’s Foundation is to be judged by what it is established to do.
13. As section 4(2) of the Act makes plain, there is to be no presumption that a purpose of a particular description is for the public benefit. That is to be determined on the evidence (*Re Hummeltenberg* [1923] No. 1 Ch 237).

The Decision Appealed

14. In a letter dated 21 July 2017, the Charity Commission notified Mr Yeats that it formally rejected his application to constitute and register The Banbury Children’s Foundation as a CIO as they were not satisfied that it would be a charity at the time it was registered. The Charity Commission gave the following reasons for coming to this decision:
 - The objects clause of The Banbury Children’s Foundation must declare exclusively charitable purposes which are for the public benefit and the Charity Commission found that the objects as drafted were unclear.
 - Neither the definition nor scope of the human rights to be advanced or the education to be pursued were adequately specified.
 - Human rights can be advanced in a way that is both charitable and non-charitable and 3.1 of the Constitution does not sufficiently clarify the purpose of The Banbury Children’s Foundation.
 - Where the objects are ambiguous or unclear the Charity Commission will “look at the factual matrix” to assess the organisation and its purposes. Having done so here and asked specific question of Mr Yeats and reviewed the responses, the Charity Commission found that these did not demonstrate a clear link between the activities described in The Banbury Children’s Foundation business plan and its charitable purposes.
 - For these reasons the Charity Commission was not satisfied that The Banbury Children’s Foundation is a charity or that it has been established to further exclusively charitable purposes for the public benefit.
15. The Charity Commission decision referred to its examination of the business plan of The Banbury Children’s Foundation and in particular to the proposals to advance human rights for children by making grants and bursaries. The Charity Commission was not persuaded that The Banbury Children’s Foundation and its trustees had the capability to carry out this purpose for the public benefit. It also referred to the proposals in the business plan for The Banbury Children’s Foundation to work to address the widespread trafficking of British children through collection centres as part of a Government or Conservative party operation through “call outs” delivered through telecommunication technology. The Charity Commission sought clarification of the basis on which Mr Yeats believed such a problem existed and stated that they had not been provided with any evidence to support these claims.

The Appeal

16. Mr Yeats submitted an appeal against the decision on 1 September 2017 in which he stated:

“We advance human rights for children through of third party’s to improve legislation. We hold to a four year strategic policy plan. We work for the public benefit and are addressing at a range of social issues and human rights violations through a number of campaigns

Please note, although our initial focus was on trafficking from a ‘Call-out’ in Banbury, the number of campaigns that the charity undertakes as part of its work is increasing in line with our four year strategic plan. We hold to an extensive list of campaigns that we are addressing to advance human rights”

Mr Yeats also referred to a list of people that “acknowledge The Banbury Children’s Foundation recent work”, which included a large number of MPs and some well-known sports people, companies and business people.

The Charity Commissions’ response

17. The response of the Charity Commission to the appeal set out a summary of the relevant law in relation to the regulation of CIOs and charities and recorded its concerns about the application from Mr Yeats and concluded that The Banbury Children’s Foundation did not meet the legal test for being a charity under the Act because its particular purposes were not sufficiently certain to be charitable. It stated that having the purpose of advancing human rights is too broad and is therefore not exclusively charitable; that there is insufficient evidence that The Banbury Children’s Foundation’s purpose of advancing education meets the requisite standards of education in charity law; and that there was insufficient evidence that the proposed purposes of The Banbury Children’s Foundation are for the public benefit.

The Applicant’s Submissions

18. Mr Yeats presented his appeal at the hearing and set out his aims for The Banbury Children’s Foundation in advancing human rights for children, advancing education and in addressing awareness of the importance of human rights for children. Mr Yeats took the tribunal through a written note that he submitted on the day of the hearing that explained the purposes and the proposed activities of The Banbury Children’s Foundation. He repeatedly stressed that The Banbury Children’s Foundation would only do work that was for the public benefit, that it would limit its activities to the advancement of human rights and education and that, in doing so, it would work with specialist academics and lawyers. He was clear that human rights meant those rights set out in the European Convention on Human Rights and the Universal Declaration of Human Rights. He sought to stress that the CIO would not carry out widespread lobbying and would not seek the repeal of legislation. However he was also clear that The Banbury Children’s Foundation would meet with individual parliamentarians and that it would seek to improve the law and to “improve” legislation and statutory instruments. Mr Yeats took the tribunal through The Banbury Children’s Foundation goals and in particular the nine campaigns that would be its immediate focus if it were registered. These are addressed in more detail below.

The Charity Commission’s Submissions

19. Mr Smith, on behalf of the Charity Commission, repeated the concerns that had been raised in their decision of 21 July 2017 about the purpose of The Banbury Children’s Foundation, as set out in clause 3 of its constitution, and in particular the ambiguous and unclear drafting.

20. Mr Smith submitted that the purposes set out at the second and seventh bullet points of clause 3.1 of the Objects of The Banbury Children's Foundation were not exclusively charitable.
21. The Charity Commission argued that this ambiguity permitted it to look at the proposed activities and other information about the CIO and that, in doing so, they had concluded that even if the objects were charitable the aims of The Banbury Children's Foundation were not.
22. The Charity Commission concluded that some of the aims of The Banbury Children's Foundation were political. Mr Yeats had stated in the hearing that the aims of The Banbury Children's Foundation included improving legislation.
23. The Charity Commission could not be sure that the educational purpose of The Banbury Children's Foundation had any value given that the evidence shows that it intends to propagate a view that is wholly lacking in evidential foundation and therefore the Commission says it does not constitute "education". Therefore there is no public benefit in the propagation of that view.
24. The Charity Commission was aware that The Banbury Children's Foundation would-be inoperative if it were registered as Mr Yeats was the only trustee and the constitution required three trustees. It was also aware of Mr Yeats's statement in his business plan that he would pay himself for his work for The Banbury Children's Foundation and pointed out that this was not permissible if he was to become a trustee. However, the Charity Commission stated that their reason for not registering The Banbury Children's Foundation remained their concerns about its purposes not being exclusively charitable and for the public benefit.
25. The tribunal considered the extensive documentation prepared by Mr Yeats in support of his application and the submissions by Mr Yeats at the hearing and sought clarification of the purpose that Mr Yeats's sought to pursue in creating The Banbury Children's Foundation and in pursuing this application for it to become a CIO.
26. The tribunal found Mr Yeats to be courteous and conscientious and keen to address those issues of charity law that his application had raised. He was concerned to present his submissions in terms that addressed the problems that the Charity Commission had identified in the course of considering the application and in reviewing the purposes of The Banbury Children's Foundation.

The issues

27. The tribunal took note of its overriding objective to deal with cases fairly and justly and in ways that are proportionate and which avoid unnecessary formality whilst permitting the parties to participate fully in the proceedings.
28. In this case this approach led the tribunal to consider Mr Yeats' appeal and his application in the round. There were a number of factors in this case, the cumulative effect of which made it appropriate and necessary to take into account, not only the written constitution of The Banbury Children's Foundation, but also the information available to the tribunal about how Mr Yeats and The Banbury Children's Foundation intended to pursue its purposes and objects if it was registered as a CIO. These factors were:
 - (i) The ambiguous and unclear phrasing of the proposed objects of The Banbury Children's Foundation. The tribunal found that paragraph 3 of its Constitution is to be construed as a whole and that paragraph 3.1 is set out in an ungrammatical format that requires closer examination and contains a list of objects or purposes that are ambiguously phrased and need to be assessed, collectively and individually, to see if they are all capable of being charitable.

- (ii) The primary motivation of Mr Yeats in forming The Banbury Children's Foundation and seeking to register it as a CIO is to address his concern about a nationwide child trafficking operation in which the government is complicit and which the police are prevented by law from investigating or stopping. Mr Yeats reported that he has seen around 1.2 million children in Banbury over a five month period who were being trafficked. The trafficking is achieved by the use of particular software in mobile telephony networks that emit messages or sounds in a particular language that can be heard by the public at large, but which is particularly appealing to teenagers and young adults. Mr Yeats had heard these messages and has done so even when he is not using a mobile phone hand set. The trafficking is also achieved through the removal by the government of children at birth from their mothers. Mr Yeats has contacted a lot of important and potentially influential people to report this concern. He seeks improvements in the law so as to remove the statutory instrument that permits the trafficking to happen without legal challenge and to restrict telephone operators from using the relevant software. He is particularly concerned to "improve" the law in relation to the Children's Act and the Mental Health Act.
- (iii) Mr Yeats did not produce any evidence to support his belief that these trafficking activities are taking place other than his own account and his reporting of conversations and correspondence that he has had with others, including those in positions of power, whom he believes share his concerns.
- (iv) Mr Yeats was able to refer the tribunal to two tangible examples of the support that he claimed to have received; these were two letters; one from the office of the Prince of Wales and one from Red Bull Racing. Mr Yeats regarded these letters as giving support for the Foundation and his concerns over child trafficking. The tribunal found these letters to be no more than standard letters acknowledging correspondence with no indication of support. When questioned by the tribunal Mr Yeats remained convinced that the letters conveyed support for the concerns that he wishes The Banbury Children's Foundation to address and provided corroboration for their existence.
- (v) Of the nine campaigns that Mr Yeats stated at the hearing he intended The Banbury Children's Foundation to pursue; five related directly to his deep concerns about widespread child trafficking as described above. The other four appeared to the tribunal to have no substance when Mr Yeats attempted to explain them, other than in the potential they offered to use them in order to address the child trafficking problem he has identified.
- (vi) The tribunal found Mr Yeats to be scrupulous about stating in his answers to the tribunal that the activities in these campaigns and all work on education and awareness raising would relate to the human rights of children generally, and not just the human rights engaged in stopping organised child trafficking through telecom messages and taking babies at birth. However the tribunal noted that Mr Yeats gave no other specific examples of abuses of children's rights that The Banbury Children's Foundation would seek to address.

29. In the circumstances of this appeal the tribunal concluded that it should review and take account of the evidence in relation to the purposes which Mr Yeats, as the sole trustee, intended to pursue in applying the unclear and ambiguous objects of The Banbury Children's Foundation if it were registered as a CIO.

30. The tribunal explained to Mr Yeats its difficulties with the lack of evidence about the existence of the child trafficking that would be the primary focus of The Banbury Children's Foundation's purposes and activities. In particular, the tribunal explained its need to decide if The Banbury Children's Foundation would be acting in the public interest when there was no evidence that this specific child trafficking problem existed at all. Mr Yeats was unable to respond to these specific concerns other than by reporting his own experience and relying upon the support he believed that he had received from others. He repeated that The

Banbury Children's Foundation would seek to advance the human rights of children generally using specialist academics and lawyers and would educate others, by using influential and famous people, on the issue of human rights of children of which the child trafficking was one aspect.

31. The Tribunal's concern about the purpose for which The Banbury Children's Foundation is being formed and for which registration as CIO was sought were exacerbated by the following factors:
- The unclear and ambiguous drafting of clause 3 of the constitution
 - Mr Yeats production of different purposes and campaigns during the course of the application and the appeal, and his statement that the nine campaigns he had identified at the time of the hearing were a better and more accurate reflection of the purposes of The Banbury Children's Foundation than those set out in Clause 3.1 of the Constitution.
 - Mr Yeats' genuine inability to distinguish whether someone was offering support to him and his activities or merely acknowledging a letter from him. This failure to comprehend the plain meaning of correspondence when combined with an intention to give The Banbury Children's Foundation funds away through bursaries and grants create a considerable risk that the funds would not be expended for charitable purposes.
 - The lack of any other trustee to work alongside Mr Yeats. Two other individuals had been identified in the application, but appeared not to be involved by the time of the hearing.
 - Mr Yeats's limited understanding of charity law and his apparent failure to take advice or guidance from others, as evidenced by the poor drafting of the CIO's constitution and his failure in his responses and submissions to address the questions and concerns being raised.
 - The clear aim of The Banbury Children's Foundation to pursue ostensibly political purposes and seek legislative change as a goal in its own right and Mr Yeats's irrational approach to this area of activity. He repeatedly distinguished between improvement to the law, which he regarded as legitimate, and changing or repealing the existing law, which he believed would be political and therefore not charitable. The tribunal noted that Mr Yeats's stated purpose in improving the law was to prohibit child trafficking and kidnap when there can be no doubt that this is already illegal.
 - The evidence that Mr Yeats had been unable to respond to the legitimate requests for clarification from the Charity Commissions during the application process and the tribunal's experience in the hearing of Mr Yeats similar difficulties in answering questions or considering facts that might cause him to question his pre-existing views.

Conclusion

32. The role of the tribunal in this appeal is to make the decision afresh on whether to register The Banbury Children's Foundation as a CIO. It is therefore necessary to consider the statutory framework for the constitution and registration of a CIO in sections 207 and 208 of the Act. In particular section 208, which is set out above, requires that the tribunal must refuse an application for a CIO to be constituted and for its registration as a charity under section 207 if it is not satisfied that the CIO would be a charity at the time it would be registered. In determining whether a CIO would be a charity, it is necessary to consider sections 1, 2, 3 and 4 of the Act and determine if The Banbury Children's Foundation is established for exclusively charitable purposes and if those purposes are for the public benefit.
33. The tribunal concluded that the objects set out in clause 3.0 of the constitution of The Banbury Children's Foundation were capable of being applied for charitable purposes. The

advancement of education and of human rights are charitable purposes. In this case the overall phrasing of clause 3 of the constitution of The Banbury Children's Foundation, and in particular sub-clause 3.1, made it appropriate for the tribunal to consider in more detail if these purposes were exclusively charitable and if so, whether they would be pursued for the public benefit. Once further analysis of the application had been conducted, the tribunal was immediately on notice that the purpose of The Banbury Children's Foundation is primarily to enable Mr Yeats to pursue his aim of stopping widespread child trafficking by the UK government through novel technology. These aims are of enormous concern to him, but are so lacking in credibility that pursuing them can have no public benefit. It may have been possible for Mr Yeats to pursue these matters, whilst also pursuing other activities that would advance education and human rights for the public benefit. However, Mr Yeats's application to the Charity Commission, his appeal and his submissions to the tribunal failed to provide any persuasive evidence to support a conclusion that The Banbury Children's Foundation was being established to carry out other activities for the public benefit. In any event the purposes of a CIO have to be exclusively charitable and for the public benefit.

34. The tribunal finds that the evidence establishes that Mr Yeats primary motivation in establishing The Banbury Children's Foundation and the main purpose of The Banbury Children's Foundation under its constitution and in its proposed activity is to seek to pursue ostensibly charitable purposes in order to prevent criminal activities that are inherently unlikely to exist, in circumstances where Mr Yeats has been unable to provide any evidence of their existence and which he and The Banbury Children's Foundation are unable to explain in credible or rational terms. The tribunal concludes that the purposes of The Banbury Children's Foundation are not exclusively charitable and are not for the public benefit.

Decision

35. Pursuant to the provisions of section 208 of the Act the application under section 207 of the Act to register The Banbury Children's Foundation is refused as the tribunal is not satisfied that The Banbury Children's Foundation would be a charity at the time it would be registered as its purposes are not exclusively charitable and are not for the public benefit.
36. The appeal is dismissed.
37. A right of appeal, on a point of law only, lies to the Upper Tribunal against this decision. Any person seeking permission to appeal must make application in writing to this tribunal for permission to appeal no later than 28 days after this decision is issued, identifying the alleged error of law and state the result the person making the application is seeking.

Signed

Peter Hinchliffe
Judge of the First-tier Tribunal

Date: 19th March 2018